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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/009,924

06/18/2002

Ulrich Hege

30051/37969

1473

7590

03/08/2004

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EXAMINER

HIRL, JOSEPH P

ART UNIT

PAPER NUMBER

2121

DATE MAILED: 03/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/009,924

Applicant(s)

HEGE, ULRICH

Examiner

Joseph P. Hirl

Art Unit

2121

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 June 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 June 2002 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-11 are pending in this application.

2. The claims and only the claims form the metes and bounds of the invention.

"Office personnel are to give the claims their broadest reasonable interpretation in light of the supporting disclosure. *In re Morris*, 127 F.3d 1048, 1054-55, 44USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim are not read into the claim. *In re Prater*, 415 F.2d, 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969)" (MPEP p 2100-8, c 2, I 45-48; p 2100-9, c 1, I 1-4). The Examiner has full latitude to interpret each claim in the broadest reasonable sense. Examiner will reference prior art using terminology familiar to one of ordinary skill in the art. Such an approach is broad in concept and can be either explicit or implicit in meaning.

3. Examiner's Opinion:

Para 2 above applies. The disclosure is at best confusing following the German translation to English and the subsequent Pre-amendment A. The submission to the U. S. Patent Office is a PCT developed from a German patent. The applicant is strongly advised to submit an amended substitute specification (without new matter) in response to this office action and in meaningful compliance with the U. S. MPEP (608).

Drawings

4. The drawings are objected to because of the following:

Figs. 2-9 do not have unit identification for the abscissas and ordinates.

These objections must be corrected.

Specification

5. The specification is objected to because of the following:

Related to Figs. 2-9, page 7, lines 11-19 identify time in minutes for the abscissa.

However, there is no reason given for the common axis values representing flow and height in the top diagram. Albeit there is some justification given by choosing arbitrary units, similar problems exist in discussion of the middle and bottom graphs. All related text references should be checked for clarity and consistency.

These objections must be corrected.

Claim Objection

6. Claim 2, line 3: delete "vale" and insert "valve".

This objections must be corrected.

Claim Rejections - 35 USC § 101

7. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

8. Claim 1 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The practical application test requires that a useful, concrete and tangible result be accomplished in the technological arts. The language of the claim raises a question as to whether the claim is directed merely to an abstract idea that is not tied to a technology art, environment or machine which would result in a practical application producing a concrete, useful and tangible result to form the basis of statutory subject matter under 35 USC 101. The consequence is non-statutory.

Claim Rejections - 35 USC § 112

9. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

10. Claim 1 is rejected under 35 USC 112, first paragraph because current case law (and accordingly, the MPEP) require such a rejection if a 101 rejection is given because when Applicant has not in fact disclosed the practical application for the invention, as a

matter of law there is no way Applicant could have disclosed how to practice the undisclosed practical application. This is how the MPEP puts it:

("The how to use prong of section 112 **incorporates as a matter of law** the requirement of 35 U.S.C. 101 that the specification disclose as a matter of fact a practical utility for the invention.... If the application fails as a matter of fact to satisfy 35 U.S.C. 101, then the application also fails as a matter of law to enable one of ordinary skill in the art to use the invention under 35 U.S.C. § 112."); In re Kirk, '376 F.2d 936, 942, 153 USIPQ 48, 53 (CCPA 1967) ("Necessarily, compliance with § 112 requires a description of how to use presently useful inventions, **otherwise an applicant would anomalously be required to teach how to use a useless invention.**"). See, MPEP 21107.01 (IV), quoting In re Kirk (emphasis added).

Therefore, claim 1 is rejected on this basis.

11. Claim 1 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The implementation of a fuzzy controller is not established in the disclosure.

12. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

13. Claims 2-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2

The use of relative terms such as "further", "vice-versa", "desired", "adjusting", "less" and "substantial" reduce the claim to a level of indefiniteness.

Claim 3

The use of relative terms such as “fast”, “decrease”, and “lowering” reduce the claims to a level of indefiniteness.

Claim 4

The use of relative terms such as “increasing”, “desired”, “reducing” and “approaches” reduce the claims to a level of indefiniteness.

Claim 5

The use of relative terms such as “lowering”, and “desired reduce the claims to a level of indefiniteness.

Claim 6

The use of relative terms such as “reducing”, and “easy-running” reduce the claims to a level of indefiniteness.

Claim 7

The use of a relative terms such as “deep reduces the claims to a level of indefiniteness.

Claim 8

The use of relative terms such as “below a certain”, and “low” reduce the claims to a level of indefiniteness.

Claim 9

The use of relative terms such as “reducing”, and “poorly” reduce the claims to a level of indefiniteness.

Claim 10

The use of relative terms such as “poorer”, and “the later the tub” reduce the claims to a level of indefiniteness.

Claim 11

The use of a relative term such as “lowering” reduces the claims to a level of indefiniteness.

14. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase “the later the trub is added during a second wort” does not convey definitive meaning.

Claim Rejections - 35 USC § 102

15. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

16. Claims 1-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Qin et al (U. S. Patent 6,330,484, referred to as **Qin**).

Claim 1

Qin anticipates a device for controlling the flow of wort from a lauter tun, comprising a fuzzy controller (**Qin**, c 3, l 5-19; Examiner's Note (EN): para 2 above applies; a lauter tun from which wort flows is an industrial process wherein the use of a fuzzy controller can functionally be represented by Qin's Fig. 2.).

16. Claims 2-11 are rejected under 35 U.S.C. 102(e) as being anticipated by Stripper et al (U. S. Patent 4,990346, referred to as **Stripper**).

Claim 2

Stripper anticipates controlling a control valve (16) and a height of a raking machine (5) in dependence upon a difference between a desired wort flow and an actual wort flow (**Stripper**, c 6, l 60-64); opening further the control valve (16) and lowering further the raking machine (5) if the desired wort flow is less than the actual wort flow and vice-versa (**Stripper**, c 6, l 60-64; EN: this is an automatic process); reducing the desired wort flow if a further increase in the actual wort flow is not to be caused by further opening of the control valve (16) or lowering of the raking machine (5) (**Stripper**, c 4, l 62-67; c 5, l 1-2; EN: this is an automatic process); and additionally adjusting the desired wort flow and the height of the raking machine (5) in dependence upon the turbidity of the outflowing wort so that an increase in turbidity will result in a less substantial lowering of the raking machine and a lower desired wort flow (**Stripper**, c 4, l 62-67; c 5, l 1-2; EN: this is an automatic process).

Claim 3

Stripper anticipates and taking into account both the change with time of the position of the control valve (16) as an input variable, and that fast opening of the control valve (16) leads to a decrease in the desired wort flow and to a lowering of the raking machine (**Stripper**, c 5, l 19-39; EN: this is an automatic process; if the gradient related to flow changes substantially over a short period of time, an appropriate cut will be automatically initiated) .

Claim 4

Stripper anticipates increasing the inflow of sparge water above the actual wort flow, if the actual wort flow remains below the desired wort flow during a second wort, and reducing the inflow of sparge water as soon as the actual wort flow approaches the desired wort flow (**Stripper**, c 5, l 19-39; EN: para 2 applies; the run-off wort is in essence the second wort).

Claim 5

Stripper anticipates lowering a level in a lauter vessel (19), if the actual wort flow remains below the desired wort flow (**Stripper**, c 5, l 19-39; c 6, l 60-64; EN: para 2 applies; the run-off wort is in essence the second wort).

Claim 6

Stripper anticipates reducing the sparge water quantity in the case of easy-running brews (**Stripper**, c 6, l 27-43).

Claim 7

Stripper anticipates taking into account, for triggering a deep cut, the position of the control valve (16), the actual wort flow (15), the height of the raking machine (5) and the turbidity (**Stripper**, c 5; l 27-43; c 6, l 60-64).

Claim 8

Stripper anticipates, if the raking machine (5) has not been moved below a certain level during the first wort, moving the raking machine (5) at least once to a low position during a second wort (**Stripper**, c 5; l 27-43; c 6, l 27-64; EN: para 2 applies; the run-off wort is in essence the second wort).

Claim 9

Stripper anticipates reducing the lautered amount of first wort, if a brew runs poorly during lautering of the first wort (**Stripper**, c 6, l 27-64).

Claim 10

Stripper anticipates the poorer the second wort runs, the later the trub is added during a second wort (**Stripper**, c 6, l 27-64).

Claim 11

Stripper anticipates lowering a level in the lauter vessel occurs at the end of lautering a first wort (**Stripper**, c 6, l 27-64; EN: this is an automatic process).

Conclusion

17. The prior art of record and not relied upon is considered pertinent to applicant's disclosure.

- Moll et al, U. S. Patent 3,989,848
- Hamdy, U. S. Patent 4,929,452
- Billon, U.S. Patent 4,661,449
- Schwartz, U.S. Patent 4,455,374
- Keim, U.S. Patent 4,361,651
- Shimamura et al, U.S. 6,265,000
- Porteous et al, U.S. Patent 6,399,029
- Pawlowski, U.S. Patent 5,845,320
- Jaeger et al, DE 19739734A1
- Kuhnen et al, DE 3540319A1
- Kuhnen et al, DE 3910149A1
- Johns, WO97/44436
- Blessing, DE 19824433A1
- Raines, U.S. Patent 4,505,941
- Hancock, U.S. Patent 4,542,682
- Lampinen, U. S. Patent 4,837,156
- Stippler et al, U.S. Patent 5,778,762
- Stippler et al, U.S. Patent 5,794,518
- Stippler et al, EP 0750036A2

- Stippler et al, WO 00/00583
- Stippler et al, U. S. Pub 2002/0048620

18. Claims 1-11 are rejected.

Correspondence Information

19. Any inquiry concerning this information or related to the subject disclosure should be directed to the Examiner, Joseph P. Hirl, whose telephone number is (703) 305-1668. The Examiner can be reached on Monday – Thursday from 6:00 a.m. to 4:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Anil Khatri can be reached at (703) 305-0282.

Any response to this office action should be mailed to:

Commissioner of Patents and Trademarks,
Washington, D. C. 20231;

or faxed to:

(703) 746-7239 (for formal communications intended for entry);

or faxed to:

(703) 746-7290 (for informal or draft communications with notation of "Proposed" or "Draft" for the desk of the Examiner).

Hand-delivered responses should be brought to:

Application/Control Number: 10/009,924

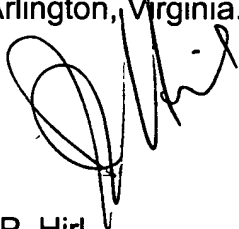
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Art Unit: 2121

Receptionist, Crystal Park II

2121 Crystal Drive,

Arlington, Virginia.

A handwritten signature in black ink, appearing to read 'J. Hirl', with a large loop at the beginning and a stylized end.

Joseph P. Hirl

March 4, 2004